



புதுச்சேரி மாநில அரசிதழ்

La Gazette de L'État de Poudouchéry

The Gazette of Puducherry

PART - I

சிறப்பு வெளியீடு

EXTRAORDINAIRE

EXTRAORDINARY

அதிகாரம் பெற்ற
வெளியீடு

Publiée par
Autorité

Published by
Authority

விலை : ₹ 3-00

Prix : ₹ 3-00

Price : ₹ 3-00

எண்	புதுச்சேரி	செவ்வாய்க்கிழமை	2011 ல்	டிசம்பர் மீ	20 உ
No.	145 Poudouchéry	Mardi	20	Décembre	2011 (29 Agrahayana 1933)
No.	Puducherry	Tuesday	20th	December	2011

IN THE COURT OF SUB-DIVISIONAL MAGISTRATE, YANAM

Present : P. JAWAHAR, I.A.S.,
Sub-Divisional Magistrate, Yanam

M.C.No.3/2011, U/S 133 of Cr. P.C.

The Member-Secretary,
Yanam Planning Authority,
Yanam.

. . . Petitioner

Versus

Thiru Tikkireddy Satyanandam,
S/o. T. Satyanarayana,
Yanam.

. . . Counter petitioner

ORDER UNDER SECTION 138 (3) Cr. P.C.

Whereas, this court has given a conditional order under section 133 Cr.P.C. in the above said M.C. No. 3/2011 on 16-5-2011 directing the counter petitioner to remove the unauthorised construction on the flood prone area in Francetippa, Yanam. And you were given 7 days time to remove the unauthorised construction from the date of receipt of the order or to appear in my court at Yanam [in the premises of the Office of the Deputy Collector (Revenue), Yanam] in person or by pleader at 5.30 p.m. on 16-5-2011;

And, whereas during the enquiry both the petitioner and counter petitioner were present and the counter petitioner has requested for time to engage a counsel and to give a copy of the complaint by the petitioner. The counter petitioner was warned not to construct any further and the Police was ordered to keep vigil. Meanwhile, the Deputy Tahsildar (Revenue), Yanam was directed to give a field report along with photo proof.

On 16-9-2011, during the hearing, the counsel for counter petitioner informed that the case was politically motivated case since there are other constructions which are constructed in the Francetippa area namely statues of political leaders, tourism structures, etc. and there is no reason why this structure should not be permitted. Further, he prayed more time for counter. The petitioner was informed that he was issued a demolition notice after issuing a stop construction notice. But, the counter petitioner has not obeyed the orders and continued to construct in the site. The counsel of counter petitioner claimed that his party has obeyed the orders whereas he found others in the vicinity carrying out their construction work un-hindered. That led his party to construct again. After listening to both the parties the following directions were given:

(i) Time was granted to the counter petitioner to file counter for one last time.

(ii) The status of the remaining construction that has taken place in the unapproved areas in the Francetippa area should be brought to the notice of this court.

The counter petitioner has filed his counter on 23-9-2011 as directed. The petitioner was absent and instructed to give reply to the counter. The counter petitioner has produced an album containing the photographs of all other buildings in the adjoining areas to the building being built by the counter petitioner. Further, the counter petitioner has sought for an inspection by the undersigned to appreciate the evidence. Upon hearing the counter petitioner it was decided to go for inspection on 27-9-2011.

An inspection was conducted on 27-9-2011 by the Sub-divisional Magistrate and it was found that a lot of structures were existing in the locality around the structure constructed by the counter petitioner. Some structures are found to be closer to the river bank than that of the counter petitioner. After inspection, the petitioner was asked to clarify the following:-

(1) Where is the existence of public nuisance?

(2) Is there no remedial action under the building bye-laws enforced by the Town and Country Planning Department/Yanam Planning Authority?

(3) Why action has not been taken against all the other defaulters? Why only this petitioner is fixed?

On 28-10-2011, the petitioner-cum-Junior Town Planner, Yanam gave a written reply to the queries raised. The counter petitioner informed that they have obeyed the orders of the Yanam Planning Authority and Sub-divisional Magistrate and stopped construction activity. Whereas, others in the vicinity have violated the very same building rules and bye-laws and have constructed and completed the houses and are having it ready for house warming. The petitioner responded that when the field staff inspected the area and asked the name of the owner of the

building who has constructed unauthorisedly they refused to tell the same. By telling this he confirmed the existence of other unauthorised building. The counter petitioner informed that the Yanam Planning Authority resorted to this provision only against him whereas there are 38 cases of violation of Town and Country Planning Rules in the Francetippa area.

Upon, hearing both the parties, it is understood that the Yanam Planning Authority has resorted to this section of law *i.e.*, 133 Cr. P.C . through this court as an interim measure as the Election Model Code of Conduct was in vogue then and they had to stop the unauthorised construction of the counter petitioner. However, the remaining violators are left out of grip of law and now they completed the construction of their buildings in blatant violation of Yanam Planning Authority norms. Hence, it is advised to deal all such violations under relevant provisions of Town and Country Planning Act and not under section 133 Cr. P.C. This case is clearly not a case of public nuisance as it does not obstruct/prevent any public in performing their normal functions. Hence, I am satisfied to the non-existence of any 'public nuisance' by the counter petitioner's construction activity. However, the Member-Secretary, Yanam Planning Authority, Yanam is free to take appropriate action under relevant provision of the Town and Country Planning Act, in dealing all such violations in Francetippa area comprehensively and not to target any single person. He may also take efforts to change the zonation of the area as there are lot of such violations ;

Now, therefore, I, P. Jawahar, I.A.S., Sub-divisional Magistrate, Yanam on perusing the written statements of both the parties and upon personal inspection and upon satisfying myself to the non-existence of public nuisance has decided to drop the case with a direction to the counter petitioner to pursue issue with the Town and Country Planning Board, Puducherry for a permanent solution.

Given under my hand seal of the court on this day of 12th December 2011.

P. JAWAHAR, I.A.S.,
Sub-divisional Magistrate.
